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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JACKIE OSBORNE,

12 Plaintiff,

13 v.

14 NATIONAL TRUCK FUNDING, LLC,
15 AMERICAN TRUCK GROUP, LLC,

16 Defendants.
17

No. 2:12-cv-02510-AC

ORDER

18 On June 19, 2013, the court held a hearing on defendants' April 29, 2013 motion to
19 dismiss.¹ Plaintiff is a pro se litigant and appeared without representation. Attorney Michael
20 Sawamura appeared on behalf of both defendants. On review of the motion, the documents filed
21 in support and opposition, and upon hearing the arguments of plaintiff and counsel, THE COURT
22 FINDS AS FOLLOWS:

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28 ¹ This matter is proceeding before the undersigned based on the consent of the parties. See ECF
Nos. 9, 15.

1 RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

2 A. Facts Underlying Litigation²

3 Plaintiff's claims arise from her lease and financing of a 2008 Volvo 780 truck from
4 defendants American Truck Group, LLC ("ATG") and National Truck Funding, LLC ("NTF").
5 The allegations of the complaint involve three distinct factual scenarios.

6 1. Lease and Financing of Truck

7 Plaintiff alleges ATG solicited her business in California, negotiated with her here, and
8 entered into a preliminary contract here. Compl. 2. On February 4, 2012, plaintiff leased a truck
9 from defendant ATG, and financed the purchase through defendant NTF.³

10 2. Transportation Violation in Arizona

11 While driving the truck from Mississippi to California on February 7, 2012, plaintiff
12 alleges that she was stopped by Arizona authorities because she lacked adequate license,
13 registration, and tags for the truck. Compl. 3. Plaintiff was cited by Arizona authorities for
14 lacking registration and for driving on an Arizona roadway in an unregistered vehicle. Id. In
15 order to proceed to California, plaintiff was forced to pay the necessary fees to temporarily
16 register the truck in Arizona. Id. On February 17, 2012, plaintiff received temporary plates and
17 registration in order to operate the truck in California. Id. 3-4.

18 "Several days" after being stopped in Arizona, plaintiff complained to Mississippi
19 authorities about NTF. Compl. 3. Then, on February 18, 2012, she contacted NTF, informing it
20 that the contract had been breached for NTF's failure to provide adequate license, registration,
21 and tags. Id. 4. Plaintiff requested arbitration, which NTF refused. Id. She then sued in
22 California state court, a suit which was dismissed pursuant to plaintiff's request for dismissal.
23 Opp'n Ex. E, at 2-3.

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25 ² Throughout the complaint plaintiff refers to defendants in the plural form, usually without
26 differentiating which allegation is set forth against which defendant. While the court is not
always certain which entity is being referred to by plaintiff, the analysis is unaffected.

27 ³ Plaintiff's complaint says that the truck was "purchased" on February 7, 2012. Compl. 2.
28 However, the agreement is for a "Commercial Truck Rental" and was signed on February 4,
2012. E.g., Compl. Ex. A, at 1.

1 3. Repossession of the Truck in Oregon

2 Plaintiff alleges that NTF repossessed the vehicle on March 14, 2012, even though she
3 had sent an email and fax to NTF the previous day containing a “preliminary injunction/
4 restraining order.”⁴ Compl. 4. On March 14, 2012, two men approached plaintiff’s driver,
5 Melvin Sanford, in Oregon. Id. The two men told Mr. Sanford that plaintiff had consented to the
6 repossession of the vehicle, providing forged documents that seemed to validate their claim. Id.
7 5. Mr. Sanford contacted plaintiff on the phone and, after discussing the matter with her, told the
8 men that the documents were forged and that plaintiff was calling the police. Id. The two men
9 then pulled a gun on Mr. Sanford, who struggled with them and “broke his fingers in the
10 struggle.” Id. 5-6. The men took the truck. Id. Criminal charges were filed the next day. Id. 6.

11 B. Additional Facts Alleged in Plaintiff’s Opposition

12 Plaintiff asserts additional allegations in her opposition, although the memorandum was
13 submitted without an affidavit or declaration signed under penalty of perjury. Plaintiff alleges
14 that on December 18, 2011, ATG sales representative “Brandy” contacted her with a proposition
15 to lease a commercial semi-truck, a 2008 780 Volvo, with the option to purchase. Pl.’s Opp’n to
16 Mot. to Dismiss. (“Opp’n”) 2. On December 21, 2011, plaintiff wired \$495.00 from California to
17 ATG in order to “start the prequalification process.” Id. On December 24, 2011, she sent ATG
18 an application and prequalification letter, to which ATG replied with several more document
19 requests. Id. Plaintiff sent the requested documents, and both she and ATG subsequently agreed
20 to the terms and conditions of the contract. Id. Plaintiff maintains that “No business transaction
21 other than the retrieval [of the truck] took place outside of CA,” and that she would not have
22 spent money and time on the purchase and transportation of the truck from Mississippi had an
23 agreement not already been in place. Id. 3-4. She also alleges that she had conversations with
24 multiple California customers in ATG’s sales office. Id. 6.

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27 ⁴ Although plaintiff claims to have “officially served” NTF with this document, the attachment
28 merely shows a “Request for Civil Harassment Restraining Orders.” Compl. 1 Ex. C, at 9. At the
 bottom, this document clearly states that it “is not a Court Order.” Id.

1 C. Procedural Background

2 1. State Court Action

3 On April 23, 2012, plaintiff filed a civil complaint against NTF and ATG in the
4 Sacramento County Superior Court. Decl. in Supp. of Defs.’ Mot. to Dismiss (“Sawamura
5 Decl.”) Ex. A, at 1.⁵ In July 2012, plaintiff submitted a request for dismissal without prejudice.
6 Opp’n Ex. E, at 2-3. This filing was never entered into the docket. Id. Defendants filed a motion
7 to quash service of summons based on lack of personal jurisdiction. Sawamura Decl. Ex. B, at 1-
8 4. Plaintiff then filed a second request for dismissal without prejudice in August 2012. Opp’n
9 Ex. E, at 2. On September 4, 2012, the court granted defendants’ motion to quash as unopposed,
10 id., and on September 26, 2012, the action was dismissed with prejudice, Sawamura Decl. Ex. B,
11 at 1-4. On January 14, 2013, however, the court vacated this ruling pursuant to plaintiff’s second
12 request for dismissal, which it found should have been addressed before defendant’s motion to
13 quash. Opp’n Ex. E, at 2-3. The action was then dismissed without prejudice pursuant to
14 plaintiff’s request.

15 2. Federal Court Action

16 On October 9, 2012, plaintiff filed her complaint against ATG and NTF in federal court,
17 alleging breach of contract and various torts (fraud, intentional infliction of emotional distress,
18 libel, conversion, and negligence). Compl. 11.

19 Plaintiff alleges three causes of action against ATG: (1) fraud, contending it leased her the
20 truck with the intent to repossess and resell the vehicle; (2) breach of contract because ATG failed
21 to “provide adequate insurance, proper registration and operational documents”; (3) conversion
22 due to ATG depriving her of the use of her deposit. Compl. 7-9.

23 Plaintiff alleges six causes of action against NTF: (1) fraud, because it leased her a vehicle
24 with improper registration, tags, and license, and it created “bogus documents” to recover the
25 vehicle; (2) breach of contract because NTF failed to “provide adequate insurance, proper
26 registration and operational documents” and because it engaged in the unlawful recovery of the
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28 ⁵ The court takes judicial notice of the documents referenced herein. Sawamura Decl. 2 n.1.

1 vehicle; (3) intentional infliction of emotional distress from the unlawful taking of the vehicle and
2 causing her creditors to send false reports to credit agencies; (4) defamation because NTF caused
3 her to default on financial obligations, which caused creditors to send false credit reports to credit
4 agencies; (5) conversion due to NTF depriving her of the use of the vehicle; and (6) professional
5 negligence because NTF's behavior fell below the duty of care expected from those in their
6 profession. Compl. 6-10.

7 On April 29, 2013, defendants filed the instant motion to dismiss for lack of personal
8 jurisdiction and improper venue. ECF No. 18.

9 On June 6, 2013, plaintiff filed an opposition. ECF No. 24. Plaintiff did not support her
10 opposition with an affidavit or declaration signed under penalty of perjury.

11 On June 11, 2013, defendants filed their reply. ECF No. 25.

12 LEGAL STANDARDS

13 A. Personal Jurisdiction

14 Federal Rule of Civil Procedure 12(b)(2) prevents a district court with a "lack of
15 jurisdiction" over defendants from exercising its power over them. "Where a defendant moves to
16 dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of
17 demonstrating that jurisdiction is appropriate." Schwarzenegger v. Fred Martin Motor Co., 374
18 F.3d 797, 800 (9th Cir. 2004). When the court decides the issue of jurisdiction without an
19 evidentiary hearing, based only on affidavits and discovery materials, a "plaintiff must make only
20 a prima facie showing of jurisdictional facts through the submitted materials in order to avoid a
21 defendant's motion to dismiss." Myers v. Bennett Law Offices, 238 F.3d 1068, 1071 (9th Cir.
22 2001) (citing Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1285 (9th Cir. 1977)).

23 The prima facie showing is achieved by producing admissible evidence which, if believed,
24 would sufficiently establish personal jurisdiction. Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir.
25 1995). Accordingly, the court accepts uncontroverted facts in the complaint as true. Mavrix
26 Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011). Jurisdictional facts cannot,
27 however, be established by nonspecific, conclusory statements. Butcher's Union Local No. 498,

1 United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 540 (9th Cir. 1986) (citing
2 Kaylor v. Fields, 661 F.2d 1177, 1182-83 (8th Cir. 1981) (although liberally construed, the
3 complaint “must contain something more than mere conclusory statements that are unsupported
4 by specific facts”)). Additionally, plaintiff cannot solely rely on allegations in the complaint
5 when they have been challenged by affidavit, Taylor v. Portland Paramount Corp., 383 F.2d 634,
6 639 (9th Cir. 1967), although conflicts between affidavits are resolved in plaintiff’s favor, Mavrix,
7 647 F.3d at 1223.

8 To determine whether plaintiff has shown personal jurisdiction when no federal statute
9 governs such jurisdiction, the court applies the law of the state in which it sits. See generally Erie
10 R. Co. v. Tompkins, 304 U.S. 64 (1938). Because no federal law controls personal jurisdiction in
11 this matter, the court applies the law of California. 28 U.S.C. § 1652; Schwarzenegger, 374 F.3d
12 at 800; see also Fed. R. Civ. P. 4(k)(1)(A). California’s long-arm statute permits personal
13 jurisdiction up to the U.S. Constitution’s due process limits. Cal. Civ. Proc. Code § 410.10. The
14 only question is whether the constitutional due process standard is met, because “the
15 jurisdictional analyses under state law and federal due process are the same.” Schwarzenegger,
16 374 F.3d at 800-01.

17 Due process allows the exercise of personal jurisdiction over an out-of-state-defendant if
18 the defendant has “certain minimum contacts with [the state] such that the maintenance of the suit
19 does not offend traditional notions of fair play and substantial justice.” Int’l Shoe Co. v.
20 Washington, 326 U.S. 310, 316 (1945); see also Ziegler v. Indian River Cnty., 64 F.3d 470, 473
21 (9th Cir. 1995). Depending on the type and breadth of a defendant’s contacts with the forum,
22 jurisdiction may be either general or specific to the claim. Roth v. Garcia Marquez, 942 F.2d 617,
23 620 (9th Cir. 1991).

24 B. Venue

25 Venue is “the geographic specification of the proper court or courts for the litigation of a
26 civil action.” 28 U.S.C. § 1390. When a case is brought in an improper venue, a defendant may
27 move to dismiss. Fed. R. Civ. P. 12(b)(3). 28 U.S.C. § 1406(a). In diversity suits, venue in a
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1 civil action is proper in “a judicial district in which a substantial part of the events or omissions
2 giving rise to the claim occurred, or a substantial part of property that is the subject of the action
3 is situated.” 28 U.S.C. § 1391(b). Venue is also proper in any district where any defendant
4 resides, if all defendants reside in the same State. Id. Corporations reside in any district where
5 they are subject to personal jurisdiction at the time the action commences. 28 U.S.C. §
6 1391(c)(2).

7 The court considers facts outside of the pleadings to determine proper venue. Argueta v.
8 Banco Mexicano, S.A., 87 F.3d 320, 324 (9th Cir. 1996). If venue is proper, a case may
9 nonetheless be transferred to any other district in which it might have been brought or to which all
10 parties have consented “[f]or the convenience of parties and witnesses,” “in the interest of
11 justice.” 28 U.S.C § 1404. In order to do this, there must be a “strong showing of inconvenience
12 to warrant upsetting the plaintiff’s choice of forum.” Decker Coal Co. v. Commw. Edison Co.,
13 805 F.2d 834, 843 (9th Cir. 1986).

14 ANALYSIS

15 Defendants move to dismiss the complaint for lack of personal jurisdiction and improper
16 venue. Alternatively, they move for transfer to a more convenient venue. For the reasons set
17 forth here, the undersigned will grant defendants’ motion to dismiss.

18 A. Personal Jurisdiction

19 A defendant’s contacts with a forum may be either general or specific to the claim,
20 depending on the type and extent of those contacts. Roth v. Garcia Marquez, 942 F.2d 617, 620
21 (9th Cir. 1991).

22 1. General Jurisdiction

23 The first question is whether personal jurisdiction may be exercised over the defendants
24 on the basis of general jurisdiction. In the context of a corporation, general jurisdiction is
25 established when a defendant’s contacts with a state are so continuous and systematic they are
26 essentially at home in the state. Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct.
27 2846, 2851 (2011). These continuous and systematic contacts with a state allow the court to
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1 exercise general jurisdiction over defendants on causes of action which are “entirely distinct”
2 from the acts which conferred jurisdiction. Id. at 2853. Thus, a corporation must “approximate
3 physical presence” by making itself “at home.” Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d
4 1163, 1169 (9th Cir. 2006). “[A] defendant must not only step through the door, it must also ‘sit
5 down and make itself at home.’” See id. (quoting Glencore Grain Rotterdam B.V. v. Shivnath
6 Rai Harnarain Co., 284 F.3d 1114, 1125 (9th Cir. 2002)). Contacts such as a “long-established
7 presence,” generation of “substantial revenue” from a state, and having “many in-state
8 consumers” have all been used to establish general jurisdiction. Id.

9 a. General Jurisdiction as to ATG

10 ATG contends that general jurisdiction is lacking because it has no systematic and
11 continuous contact with California. Mem. MTD 7-8. It claims it is a Nevada entity and has its
12 principal place of business in Mississippi. Sawamura Decl. Ex. C, at 1-2. It has no office, real
13 estate, property, bank accounts, or professional ties with California, and has never been required
14 to pay taxes here. Sawamura Decl. 3. It contends that the purchase, contract signing, financing,
15 and payment of deposit for the truck all occurred in Mississippi, as did pick-up and acceptance of
16 delivery. Id. 4.

17 In her complaint, plaintiff alleges ATG “solicited business in the State of California and
18 the preliminary contract was signed” here. Compl. 2. She also alleges “[a]ll negotiations . . .
19 were held in California.” Id. The court finds these allegations conclusory since they assert no
20 specific facts and are, therefore, insufficient to properly establish general jurisdiction. See
21 Butcher’s Union, 788 F.2d at 540.

22 Even if plaintiff’s contentions were not conclusory, she has not made out a prima facie
23 case for general jurisdiction. Simply soliciting an agreement in a state does not confer general
24 jurisdiction, nor does making telephone calls or sending letters. Gates Learjet Corp. v. Jensen,
25 743 F.2d 1325, 1331 (9th Cir. 1984). ATG also has no place of business in the forum, a typical
26 factor in finding approximate physical presence. See id. Although a lease may appear to create
27 an ongoing obligation in California, the agreement merely represents ATG doing business with a
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1 California resident, not doing business in California. See Bancroft & Masters, Inc. v. Augusta
2 Nat. Inc., 223 F.3d 1082, 1086 (9th Cir. 2000), holding modified by Yahoo! Inc. v. La Ligue
3 Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199 (9th Cir. 2006).

4 Plaintiff does make additional allegations in her opposition, which as noted was
5 unaccompanied by an affidavit or declaration signed under penalty of perjury. Plaintiff claims
6 that ATG contacted her on December 18, 2011 with an offer to lease the truck. Id. 2. She further
7 alleges that an agreement was entered in California prior to plaintiff's trip to Mississippi, and that
8 she had conversations with multiple California customers in ATG's sales office. Id. 6. However,
9 plaintiff's opposition is inadmissible as evidence and therefore will not be considered. See
10 Beyene, 854 F.2d at 1181-82; see also L.R. 230(h). Despite the leniency granted pro se litigants,
11 trial courts do not inject themselves into the adversary process on behalf of one party. Jacobsen v.
12 Filler, 790 F.2d 1362, 1354 (9th Cir. 1986). Trial courts do not intervene when a lawyer fails to
13 file opposing papers and litigants who represent themselves "should be treated no differently." Id.
14 at 1364-65. Therefore, the court cannot consider plaintiff's opposition in making its jurisdictional
15 determination.

16 Because plaintiff has failed to make out a prima facie case, the court finds that general
17 jurisdiction is lacking over ATG.

18 b. General Jurisdiction as to NTF

19 NTF also contends that general jurisdiction is lacking because it has no systematic and
20 continuous contact with California. Mem. MTD 7-8. It claims it is a Nevada entity with its
21 principal place of business in Mississippi. Sawamura Decl. Ex. C, at 1-2. It has no office, real
22 estate, property, bank accounts, or professional ties with California, and has never been required
23 to pay taxes here. Sawamura Decl. 3. It also contends that the purchase, contract signing,
24 financing, and payment of deposit for the truck all occurred in Mississippi, as did pick up and
25 acceptance of delivery. Id. 4.

26 Plaintiff's only allegations in regards to NTF's general jurisdictional contact with
27 California is that it did business with a California resident, her. Compl. 2. Plaintiff states no
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1 further allegations against NTF in her opposition which support general jurisdiction. Doing
2 business with one resident, however, is akin only to “step[ping] through the door,” not “sit[ting]
3 down and mak[ing] [one]self at home.” Tuazon, 433 F.3d at 1169. This contact is therefore
4 insufficient to allow the exercise of general jurisdiction over NTF in California.

5 2. Specific Jurisdiction

6 The court next considers whether it may exercise personal jurisdiction over defendants on
7 the basis of specific jurisdiction. Specific jurisdiction, unlike general jurisdiction, requires a
8 defendant have sufficient, specific contact with the state. Goodyear, 131 S. Ct. at 2851. This
9 second basis gives the court jurisdiction “arising out of or related to” the defendants’ contacts
10 with California. See Burger King, 471 U.S. at 473. A court has specific jurisdiction when
11 defendants (1) purposefully direct their activities or consummate some transaction with the forum
12 or resident, or they purposefully avail themselves of the privilege of conducting activities in the
13 forum, thereby invoking the benefits and protections of its laws; (2) the claim arises out of or
14 relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction is
15 reasonable. Schwarzenegger, 374 F.3d at 802. The plaintiff must prove the first two prongs, but
16 the burden then shifts to the defendant to “present a compelling case” that the exercise of
17 jurisdiction would not be reasonable. Burger King, 471 U.S. at 477.

18 a. Purposeful Availment

19 “This purposeful availment requirement ensures that a defendant will not be haled into a
20 jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral
21 activity of another party or a third person.” Burger King, 471 U.S. at 475 (citations and internal
22 quotations omitted). Purposeful availment is analyzed differently for contracts than for torts.
23 Schwarzenegger, 374 F.3d at 802. The court uses standard purposeful availment for contracts,
24 and it uses purposeful direction analysis for torts. Id.

25 i. Standard Purposeful Availment

26 Regarding plaintiff’s contract claims, purposeful availment is satisfied when a defendant
27 completes a transaction in the forum, such as delivering goods or executing a contract. Yahoo!
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1 Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006).

2 The focus is on whether deliberate actions were taken within the forum state or continuing
3 obligations were created with forum residents. Hirsch v. Blue Cross, Blue Shield of Kansas City,
4 800 F.2d 1474, 1478 (9th Cir. 1986) (citing Burger King, 471 U.S. at 475).

5 1. Standard Purposeful Availment as to ATG

6 ATG acknowledges that it conducted business with one California resident, plaintiff.
7 Sawamura Decl. 10. However, it contends it could not have anticipated litigation in California
8 because it did not direct business activities to California. Id. 5-6. It also contends that this action
9 arises out of events that occurred exclusively outside of California, so the dispute did not arise
10 from contact with the forum state. Id. 10-11.

11 In the complaint, plaintiff alleges breach of contract because ATG failed to “provide
12 adequate insurance, proper registration and operational documents.” Compl. 7-8. Although she
13 leased a truck from ATG in Mississippi, she asserts ATG solicited her business in California and
14 the preliminary contract was signed here. Id. 2. She also alleges that negotiations between
15 herself and ATG were held in California. Id. Plaintiff presents no specific facts to support her
16 allegation, saying simply “the preliminary contract was signed in California,” and “all
17 negotiations . . . were held in California.” Id. These allegations are conclusory and cannot,
18 without more, establish specific jurisdiction. See Butcher’s Union, 788 F.2d at 540.

19 In her opposition, plaintiff claims that ATG contacted her on December 18, 2011 with an
20 offer to lease the truck. Opp’n 2. She further alleges that an agreement was entered into in
21 California prior to plaintiff’s trip to Mississippi. Id. These allegations, however, are not
22 presented in an affidavit and for reasons previously discussed, the court does not consider
23 plaintiff’s opposition in making its jurisdictional determination. Part III.A.1.

24 Consequently, the undersigned considers only ATG’s contentions. Its contention that all
25 events occurred outside of California necessitate that ATG completed the transaction outside of
26 the forum. Therefore, the court finds standard purposeful availment has not been satisfied as to
27 ATG.

1 1. Intentional Act

2 Neither defendant has contested the alleged intentional acts by affidavit. The unopposed
3 facts in plaintiff's complaint are therefore taken as true. Mavrix, 647 F.3d at 1223.

4 Plaintiff alleges that ATG leased the vehicle to her, intending to unlawfully repossess it.
5 Compl. 7. She also alleges that ATG falsely promised to provide adequate insurance, proper
6 registration, and operational documents, but never actually intended to do so. Id. 7-8. She claims
7 ATG falsely led her to believe it had provided her with a \$1 million insurance policy to operate
8 the vehicle, but later discovered the policy only applied when the vehicle was not in operation.
9 Id.⁶

10 Plaintiff alleges that NTF financed the lease through NTF, and NTF intended to
11 unlawfully repossess it. Id. 7. Plaintiff next alleges that NTF falsely promised to provide
12 adequate insurance, proper registration, and operational documents, but never actually intended to
13 do so. Id. 7-8. She claims it falsely led her to believe it had provided her with a \$1 million
14 insurance policy to operate the vehicle, but later discovered the policy only applied when the
15 vehicle was not in operation. Id. Plaintiff also alleges the "unlawful recovery of the vehicle" by
16 NTF. Id. 8.

17 An intentional act is "an intent to perform an actual, physical act in the real world."
18 Schwarzenegger, 374 F.3d at 806. The court finds that ATG committed intentional acts by leasing
19 the vehicle, making promises concerning the registration and insurance. The court finds that NTF
20 also committed intentional acts by financing the lease, making promises concerning the
21 registration and insurance, and repossessing the vehicle.

22 2. Harm

23 The harm element is satisfied if "defendant's intentional act has foreseeable effects in the
24 forum." Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1131 (9th Cir. 2010)
25 (internal quotations omitted). The harm need not have been caused by wrongful acts since "a
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27 ⁶ Plaintiff also alleges that ATG failed to return her deposit. Compl. 8. This is really a failure to
28 act, defying the requirement that defendants commit an "actual, physical act in the real world."
Schwarzenegger, 374 F.3d at 806.

1 holding on the merits that the act was not wrongful would deprive the court of jurisdiction.” Id.
2 Plaintiff alleges that she suffered harm as a foreseeable effect of defendants’ intentional acts,
3 including the abandonment of \$65,000 of freight, damage to her reputation, and the
4 inconvenience and fees incurred from the incident in Arizona. Compl. 3, 9. These facts are
5 unopposed by defendants’ affidavits and are therefore taken as true. Mavrix, 647 F.3d at 1223.
6 The undersigned finds that these allegations satisfy the harm element.

7 3. Express Aiming

8 Finally, “[t]he express aiming prong of the *Calder*-effects test presents a more difficult
9 question.” Fiore v. Walden, 688 F.3d 558, 577 (9th Cir. 2012), cert. granted, 133 S. Ct. 1493
10 (2013) (internal quotation omitted). Express aiming is established if a defendant individually
11 targeted a forum resident by taking action “outside the forum state for the purpose of affecting a
12 particular forum resident or a person with strong forum connections.” Fiore, 688 F.3d at 577.
13 But “the express aiming requirement is not satisfied where it is merely foreseeable that there will
14 be an impact on individuals in the forum.” Id. The distinction “is often the difference between an
15 *intended* impact that is either local or undifferentiated, and an *intended* impact that is targeted at a
16 known individual who has a substantial, ongoing connection to the forum.” Id. at 578 (citing
17 Bancroft, 223 F.3d at 1088) (internal quotation omitted) (emphasis original). For example, a
18 passive website viewed by forum residents does not satisfy the express aiming requirement
19 because there is no “individualized targeting” in maintaining the website. Pebble Beach Co. v.
20 Caddy, 453 F.3d 1151, 1156-57 (9th Cir. 2006). Also, an Ohio car dealership’s unauthorized use
21 of Arnold Schwarzenegger’s likeness in local advertisements lacked express aiming at California
22 because the defendant intended the ads to have only local effects. Schwarzenegger, 374 F.3d at
23 807. In Brayton, on the other hand, the defendant individually targeted plaintiff by “making
24 commercial use of” plaintiff’s copyrighted material *for the purpose* of competing with plaintiff.
25 Brayton, 606 F.3d at 1129. Additionally, a defendant individually targeted plaintiffs when he
26 knew of their significant connection to Nevada and of the likely impact his defrauding actions
27 would have on their property and business in Nevada. Fiore, 688 F.3d at 581.
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1 a. ATG's Express Aiming

2 While ATG acknowledges that it conducted business with one California resident,
3 plaintiff, Sawamura Decl. 10, it contends it could not have anticipated litigation in California
4 because it did not direct business activities to California, id. 5-6. ATG argues that the agreement
5 was entered into in Mississippi, not California, and that the agreement requires disputes to be
6 decided by arbitration in Mississippi. Id. 10.

7 Plaintiff alleges fraud against ATG, contending it leased the truck with the intent to
8 repossess and resell the vehicle. Compl. 7. She generally alleges a scheme in which ATG leased
9 the vehicle with the purpose of unlawfully getting it back and profiting from it again. Id.
10 However, she simply concludes this to be the case without providing specific facts. Although
11 fraud targeted at someone with substantial ties to a forum normally meets the express aiming
12 factor, Fiore, 688 F.3d at 580, plaintiff's allegations are conclusory and inadequate to support the
13 exercise of personal jurisdiction. See Butcher's Union, 788 F.2d at 540.

14 Plaintiff also alleges conversion due to ATG depriving her of the use of her funds. Compl.
15 9. She further alleges breach of contract because ATG failed to provide adequate insurance,
16 registration, and operational documents. Id. 8. These do not allege any action taken "*for the*
17 *purpose of affecting*" plaintiff. See Fiore, 688 F.3d at 577 (emphasis added). Without alleging
18 how ATG's conversion and breach of contract was performed for the purpose of affecting her, the
19 express aiming factor is not met.

20 In her opposition, plaintiff asserts that ATG committed civil wrongs against her. Opp'n 7.
21 She also contends that ATG has done business with other California customers. Id. However, as
22 discussed, the court cannot consider plaintiff's opposition as evidence. See Beyene, 854 F.2d at
23 1181-82; see also L.R. 230(h).

24 For these reasons, the undersigned concludes that ATG's acts did not satisfy the express
25 aiming factor.

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1 b. NTF's Express Aiming

2 While NTF acknowledges that it conducted business with one California resident,
3 plaintiff, Sawamura Decl. 10, it contends it could not have anticipated litigation in California
4 because it did not direct business activities to California, id. 5-6. NTF argues that the agreement
5 was entered into in Mississippi, not California. Id. 10. It also argue that the agreement requires
6 disputes be decided by arbitration in Mississippi. Id.

7 Plaintiff first alleges fraud against NTF because it intended to repossess the vehicle when
8 it financed the lease, provided plaintiff with improper registration, tags, and license, and created
9 "bogus documents" to recover the vehicle. Compl. 6-7. She generally alleges a scheme wherein
10 NTF financed the vehicle's lease with the purpose of unlawfully getting it back and profiting from
11 it again. Id. However, she simply concludes this to be the case without providing factual support.
12 Although fraud targeted at someone with substantial ties to a forum normally meets the express
13 aiming factor, Fiore, 688 F.3d at 580, plaintiff's allegations are conclusory and inadequate to
14 support the exercise of personal jurisdiction. See Butcher's Union, 788 F.2d at 540.

15 Plaintiff then alleges: (1) breach of contract because NTF failed to "provide adequate
16 insurance, proper registration and operational documents" and because it engaged in the unlawful
17 recovery of the vehicle; (2) intentional infliction of emotional distress against NTF from the
18 unlawful taking of the vehicle and causing her creditors to send false credit reports to credit
19 agencies; (3) defamation against NTF because it caused her to default on financial obligations,
20 which caused creditors to send false credit reports to credit agencies; (4) conversion due to NTF
21 depriving her of the use of the vehicle; (5) and professional negligence because NTF's behavior
22 fell below the duty of care expected from those in their profession. Id. 7-10. These claims do not
23 allege any action taken "*for the purpose* of affecting" plaintiff. See Fiore, 688 F.3d at 577
24 (emphasis added). Without alleging how NTF's acts were performed for the purpose of affecting
25 her, the express aiming factor is not met.

26 In plaintiff's opposition, she contends that NTF "committed both a civil and criminal act
27 against the plaintiff in several other states." Opp'n 7. She also contends that NTF has done
28

1 business with other California customers. Id. Again, however, the court cannot consider
2 plaintiff's opposition as evidence. See Beyene, 854 F.2d at 1181-82; see also L.R. 230(h).

3 For these reasons, the undersigned concludes that NTF's acts have not satisfied the
4 express aiming factor.⁷

5 In summary, the undersigned holds that plaintiff has failed to assert sufficient facts to
6 establish the court's personal jurisdiction over either defendant. Therefore, defendants' motion to
7 dismiss must be granted. This does not end the court's inquiry, however, because the allegations
8 included in plaintiff's opposition suggest that plaintiff may be able to establish personal
9 jurisdiction over one of the defendants—ATG—in an amended complaint. There is no basis for a
10 conclusion that plaintiff could establish this court's jurisdiction over NTF by amendment, on the
11 other hand. NTF must be dismissed for lack of personal jurisdiction since plaintiff has failed to
12 assert any facts as to that entity that would "not offend traditional notions of fair play and
13 substantial justice." See Int'l Shoe, 326 U.S. at 316.

14 If venue were proper in this court and if plaintiff wished to proceed here, she could do so
15 against ATG only. Plaintiff would have to either abandon her claims against NTF or pursue them
16 in a separate lawsuit filed in the Southern District of Mississippi. Accordingly, rather than
17 addressing the possibility of amendment, the court now turns to defendants' request for a transfer
18 of venue.

19 B. Transfer for Convenience

20 Defendants move to transfer for convenience to the United States District Court for the
21 Southern District of Mississippi, in Gulfport, Mississippi. Defendants contend that adjudication
22 there would expend fewer resources and would be in the interests of justice. Mem. MTD 13.

23 When venue is proper⁸, a case may be transferred to another district where venue is also
24 proper for the "convenience of parties and witnesses," and in the "interest of justice." 28 U.S.C.
25 § 1404. Only a "strong showing of inconvenience" will upset "plaintiff's choice of forum."

26 ⁷ Because neither ATG nor NTF satisfied the broad purposeful availment test, the court need not
27 consider if plaintiff's harm arose from their actions or whether the exercise of jurisdiction is
reasonable.

28 ⁸ The court assumes for the purpose of this motion that venue is proper.

1 Decker, 805 F.2d at 843. There exist nine factors for the court to balance when considering
2 transfer, four of which are for the convenience of the parties and five of which are for the public
3 interest. The four private convenience factors are (1) the ease of access to evidence, (2) the
4 ability to compel unwilling witnesses, and minimize cost, (3) the chance to view the premises if
5 view is appropriate, (4) and all other considerations that make trial of a case easy, expeditious,
6 and inexpensive. Id. (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)). The five
7 public factors are (5) the administrative difficulties from court congestion, (6) the “local interest
8 in having localized controversies decided at home,” (7) the interest in conducting diversity cases
9 in a forum that is at home with the law governing the action, (8) the avoidance of unnecessary
10 conflict of laws, or in the application of foreign law, (9) and the unfairness of burdening an
11 unrelated forum’s citizens with jury duty. Id. The court must balance these factors with
12 “plaintiff’s choice of forum.” Id.

13 The court has considered all nine factors, finds that none favor California, and concludes
14 that transfer to the Southern District of Mississippi is proper. Turning first to the private
15 convenience factors, the first three factors do not weigh in favor of either forum: (1) access to
16 evidence will be equal in either forum since both forums contain some evidence; (2) there are
17 witnesses in both forums; and (3) an examination of premises is irrelevant to the nature of this
18 suit. The fourth factor, however, weighs heavily in Mississippi’s favor: making trial easier. The
19 simple fact is that this case will proceed faster in Mississippi because that court carries fewer
20 cases than the Eastern District of California, making it easier and less expensive. As has been
21 extensively documented, the Eastern District of California is much more congested than
22 practically any other court in the country, including the Southern District of Mississippi. As of
23 March 2012, the Eastern District of California had 8,208 cases pending, with nine district judges,
24 both senior and active, while the Southern District of Mississippi had 2,136 cases pending, with
25 ten district judges. See U.S. District Courts, Caseload Statistics 2012, Tables C and D, available at
26 <http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/FederalJudicialCaseloadStatistics2012.aspx>;
27 see also Meyer Mfg. Co. Ltd. v. Telebrands Corp., CIV. S-11-3153 LKK, 2012
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1 WL 1189765 (E.D. Cal. Apr. 9, 2012) (citing the Caseload tables for evidence that California's
2 Eastern District is more heavily burdened than that of the District of New Jersey, and transferring
3 the case there). Additionally, since the court does not have personal jurisdiction over NTF and
4 because the two entities are closely linked together⁹ (they share the same president), it would
5 benefit plaintiff greatly to conserve her resources and proceed against the two entities in the same
6 suit.

7 Next, the undersigned turns to consideration of the public factors. First, as discussed, it is
8 evident that transfer to Mississippi would ease administrative burdens on this already over-
9 burdened court. Second, California does not have a "local interest" because none of plaintiff's
10 allegations establish that the controversy is localized. Moreover, since the agreement entered into
11 between plaintiff and NTF establishes that Mississippi law is to be applied to "any claim, dispute,
12 or controversy,"¹⁰ and that the agreement "shall also extend to American Truck Group, LLC,"
13 Lindsay Decl., Ex. A at 6, the seventh factor (the interest in conducting diversity cases in a forum
14 that is at home with the law governing the action) and the eighth factor (the avoidance of
15 unnecessary conflict of laws, or in the application of foreign law) weigh in favor of Mississippi.
16 The judicial system favors "having the trial of a diversity case in a forum that is at home with the
17 state law that must govern the case, rather than having a court in some other forum untangle
18 problems in conflict of laws, and in law foreign to itself." Van Dusen v. Barrack, 376 U.S. 612,
19 645 (1964) (quoting Gulf Oil Corp., 330 U.S. at 509). Finally, the ninth factor weighs in favor of
20 Mississippi since it would be unfair to burden this state's citizens with jury duty in an action
21 involving claims that arose in different states and involving laws of a foreign jurisdiction.

22 In sum, all factors other than plaintiff's preference are neutral or favor transfer. The
23 showing of inconvenience is sufficiently strong "to warrant upsetting the plaintiff's choice of
24 forum." Decker, 805 F.2d at 843. Accordingly, the undersigned would order the action

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26 ⁹ In fact, plaintiff herself seems to refer to defendants in the plural form, usually without
differentiating her allegations against the two defendants.

27 ¹⁰ The court notes that defendants have not invoked their arbitration agreement with plaintiff,
28 despite the seeming existence of one, and the fact that "Both parties hereby waive their right to
litigation." Lindsay Decl., Ex. A at 8.

1 transferred to Mississippi even if plaintiff could establish this court's personal jurisdiction over
2 ATG and was willing to proceed here against ATG only.

3 CONCLUSION

4 Based on the foregoing, IT IS ORDERED that:

5 1. Defendants' motion to dismiss is granted;

6 2. This action is transferred to the United States District Court for the Southern District of
7 Mississippi.

8 DATED: July 26, 2013

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11 ALLISON CLAIRE
12 UNITED STATES MAGISTRATE JUDGE

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